IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-7293 of 2017 (O&M)
Date of decision: 29.09.2022

Sukhwinder Singh ..**Petitioner**

Versus

Surinder Singh and others ..**Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pardeep Bajaj, Advocate,
for the petitioner.

Mr. Ish Puneet Singh, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

The petitioner before this Court is the plaintiff in a suit filed for possession by way of specific performance of the agreement to sell.

The agreement to sell was admitted in evidence and was marked as an exhibit. The marginal witness of the agreement to sell was also examined. Even the stamp vendor was examined and cross-examined. Subsequently, the Court has ordered the impounding of the agreement to sell while directing the plaintiff to make good the deficiency of stamp duty along with the penalty which is 10 times the value of deficit amount.

Challenging the aforesaid order passed by the trial Court on 31.08.2017, this revision petition has been filed.

On 31.10.2017, while issuing notice of motion, the following order was passed:-

> *"Counsel for the petitioner, inter alia, contends that the impugned order passed on 31.08.2017 directing the petitioner/plaintiff to make good deficiency of stamp duty with penalty of ten times cannot be allowed to*

sustain in the light of judgments of Hon'ble the Supreme Court of India 'Javer Chand and others vs. Pukhraj Surana', 1961 AIR (SC) 1655 and 'Shyamal Kumar Roy vs. Sushil Kumar Agarwal', 2007 (1) R.C.R. (Civil) 321. To bring home his contention, it is argued that the document in question (agreement to sell) was marked as an exhibit for the first time in the statement of Paramjit Singh, a marginal witness of the agreement without any objection by the opposite party and said witness was crossexamined on 29.03.2017 but no issue with regard to deficiency of stamp duty was raised by the defendants. Another witness namely Rajiv Kapoor, Stamp Vendor was examined and cross examined on 27.02.2017, therefore, it is not open for the trial Court to raise an issue with regard to insufficiency of stamp duty.

Notice of motion for 17.01.2018.

In the meantime, operation of the impugned order shall be kept in abeyance. However, further proceedings shall carry on but passing of final order shall remain stayed."

The correctness of the facts noted in the order dated 31.10.2017 are not disputed by the learned counsel representing the respondents.

The learned counsel representing the petitioner further relies upon the judgment passed by the Karnataka High Court in ***Cave Caterers Pvt. Ltd. vs. Suha Enterprises, 2011 (8) R.R.R.(Civil) 2843***, to contend that the court, even, on the basis of suo moto, has no jurisdiction to impound such a document on the ground of deficiency of stamp duty after it has been admitted in evidence. It has been held that bar under Section 36 of the Stamp Act, 1899, will be applicable to the Court also.

The learned counsel representing the respondents failed to draw the attention of the Court to any other view.

In view of the aforesaid, the order dated 31.08.2017 is set aside. The revision petition is allowed.

The trial Court is directed to proceed with the case.

All the pending miscellaneous applications, if any, are also disposed of.

September 29, 2022 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*